

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MORFORD, Minors.

UNPUBLISHED

January 28, 2014

No. 316377

Gratiot Circuit Court

Family Division

LC No. 11-007703-NA

Before: SAWYER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother¹ appeals as of right from the trial court's order terminating her parental rights to two of her three minor sons, JWDM and JMM, under MCL 712A.19b(3)(c)(i) (conditions that lead to adjudication still exist), (3)(g) (failure to provide proper care or custody), and (3)(j) (reasonable likelihood of harm).² We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). We review for clear error the trial court's findings on appeal from an order terminating parental rights. *In re Trejo*, 462 Mich at 356-357; see also MCR 3.977(K). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Respondent argues that the statutory grounds were not proven because the record shows that she had made considerable progress and had benefited from the services offered. Respondent asserts that the trial court erred in its findings regarding existing barriers to

¹ Respondent-father's parental rights to JWDM and JMM were also terminated; however, he is not a party to this appeal.

² Respondent's other minor child, JC, was placed with his biological father. JC's biological father is not the father of JWDM and JMM. JC is not a subject of this appeal.

reunification. The trial court agreed with respondent that there was sufficient evidence to establish that she had overcome her substance-abuse issues, and it commended her on her success. However, the trial court pointed out that in light of the housing and domestic-violence barriers, respondent had not alleviated the conditions that resulted in the court assuming jurisdiction.

A. HOUSING

The trial court made extensive findings regarding the barriers that remained. With respect to housing, the court stated the following:

The evidence established a long history of unsanitary living environment without basic utilities and places for the children to sleep or eat due to debris, clutter or even rotting food. While the evidence established [respondent's] living arrangement improved over time and is presently a suitable environment, it had been rectified for only a brief period of time. The ability to maintain that suitable housing for an extended period of time has not been demonstrated. In fact, the record establishes a history of being unable to do so.

The trial court did not clearly err by determining that respondent had not demonstrated the ability to maintain adequate housing. There was evidence presented that from the beginning of the case in August 2011 until at least December 2012, respondent was living in a home with no or intermittent electricity. There was also considerable evidence regarding the lack of cleanliness of respondent's housing, including flea infestation. Evidence was presented that respondent's housing was so cluttered that it was difficult to move around. There was testimony that respondent's housing situation had recently changed and that her new home was suitable. However, roughly 16 months passed while respondent continued to reside in a home that was dirty and without utilities. As the trial court concluded, the three or so months that respondent lived in a new home did not demonstrate an "ability to maintain that suitable housing for an extended period of time." Furthermore, respondent did not have a written lease on her new, rent-free home, so there was no guarantee that the situation would continue. Given the evidence establishing a lengthy history of inadequate housing, the trial court did not err by determining that respondent had not sufficiently alleviated the barrier.

B. DOMESTIC VIOLENCE

Regarding the condition of domestic violence, the trial court found as follows:

The emotional stability and domestic violence: At best the evidence demonstrates five months of consistent progress toward eliminating these barriers. The record in this case sets forth an extensive and long-standing history of violence between these parents. The record reflects the mother was not always the victim. The court acknowledges the law does not allow for termination of parental right solely based on the fact that a parent is the victim of domestic violence. Considering the length of the abusive relationship, the extensive nature of the abuse and the on again, off again nature of the abusive relationship even while the Case Service Plan was in place, [respondent] has not demonstrated for

any appreciable consistent period of time the insight necessary for this court to consider her rehabilitated to the extent that she can presently provide for the minors.

The trial court did not err by determining that respondent had not demonstrated an ability to protect the children from domestic violence between herself and respondent-father. Foster-care worker Dan Hulings testified that petitioner received information that respondent was back in a relationship with respondent-father in November 2012. Hulings said that respondent was attempting to reunite with respondent-father because he claimed he was attending services. Licensed social worker Shelly Bailey, who was providing individual therapy and parenting classes to respondent, testified that when respondent reunited with respondent-father in October/November 2012, respondent had no insight of how domestic violence and a relationship with respondent-father affected the children. Bailey opined that respondent had not made progress on the domestic-violence barrier, and Hulings said that respondent's willingness to try and work on the relationship with respondent-father demonstrates respondent was not able to protect the children. Foster-care specialist Emily Harris also testified that respondent seemed unwilling to separate from respondent-father, and respondent's mother testified that she did not think respondent and respondent-father would stay apart. We agree with the trial court that, "by her actions," respondent "has cause[d] the children to fear for their own safety and hers. She has failed to establish an ability to protect herself from abuse by [respondent-father] for any consistent period of time and has therefore failed to protect them."

C. REASONABLE AMOUNT OF TIME

MCL 712A.19b(3)(c)(i) states that termination is appropriate when "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." The children had been living with their maternal grandmother since October 2011, roughly 20 months at the time of the court's decision. Further, the children had lived with their grandmother off and on their entire lives. Given respondent's history with unsanitary living, violent relationship with respondent-father, and lack of insight into the impact that the relationship had on her children, there was substantial evidence that these issues, i.e., barriers to reunification, would not be rectified within a reasonable time. There was evidence of progress, especially in the five or six months before termination, but the history of an inability to maintain progress and the tendency to fall back on help from her mother to care for the children weighed against finding that lasting changes could be made in a reasonable time given the ages of the children.

The record supports the trial court's conclusion that each statutory ground cited was established.

D. ADEQUATE SERVICES

Next, respondent argues that petitioner failed to provide her with adequate services. The trial court discussed the services that petitioner offered to respondent, but respondent did not argue that she lacked services, merely that she needed more time to continue with her recent progress. Because respondent did not raise the sufficiency of the services provided before the trial court, this issue is unpreserved. See *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d

431 (2008). Unpreserved issues are reviewed for plain error affecting substantial rights. See *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). To avoid forfeiture, the party alleging error carries the burden of proving that (1) there was an error, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights. *Id.*, citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

If a parent claims that he or she was not provided reasonable services, it is relevant to the sufficiency of the evidence for termination. *In re Fried*, 266 Mich App at 541. In this case, the trial court found that the following services were offered:

[C]ase management by the Department of Human Services, placement of the minor children, psychological evaluation of the minor, various counseling services for both parents including Cycles of Success, counseling with Shelly Bailey, counseling with Carol Waters at Addict--Addictions Solutions, and . . . an opportunity for counseling provided to both parent through Woman's Aid service
....

Harris confirmed that respondent was referred to Addictions Solutions, AA and NA, Women's Aid, Community Mental Health (CMH), Shelly Bailey, Child Advocacy, and for psychological evaluation with Dr. Barclay in June 2012. She was also set up to receive random drug testing. In August 2011, petitioner discussed Families First with respondent to address the housing barrier and also discussed outreach counseling to address domestic violence. However, Families First cancelled services because of respondent-father's criminal sexual conduct conviction and the case was referred to Advance Impact. Harris also testified that respondent had initially been receiving services through Cycles of Success, but it was cancelled by the counselor in October 2011 because respondent had reunited with respondent-father and the counselor did not feel that it was a safe situation.

We conclude that reasonable and sufficient services were offered to respondent, including avenues to address any mental-health issues that were identified. Respondent has failed to demonstrate an error affecting her substantial rights. See, generally, *Kern*, 240 Mich App at 336.

II. BEST INTERESTS

Respondent argues that the trial court erred by determining that termination of her parental rights was in the best interests of her children. The trial court's best-interest determination is reviewed for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). If the trial court determines that at least one statutory ground for termination exists, then the court must order termination if the trial court affirmatively finds termination is in the best interests of the children. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). When making the best-interest determination, the trial court may consider the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App at 41-42. The trial court may also consider the bond between the child and the parent, the parent's ability to parent, and any advantages of a foster home over the parent's home. *Id.* If multiple

children are involved, the trial court must determine the best interests of each child individually. *Id.* at 42.

The trial court determined that termination was in the children's best interests because it gave them the permanency, stability, and safety they needed. The trial court found that the children were happy and well adjusted in their placement with their grandparents. Respondent asserts that the trial court should have found a guardianship more appropriate. However, the trial court specifically concluded that a guardianship was not appropriate because it would not provide the permanency and stability that JWDM and JMM needed. The trial court explained that the children suffered from posttraumatic stress and needed permanence and stability.³

Respondent maintains that because her parental rights to JC were not terminated, it was error to conclude that termination was in the best interests of JWDM and JMM because the three children are being treated differently. Again, the trial court must address each child separately. *Id.* And JC was not part of the termination proceeding because he had been placed with his father.

Accordingly, the trial court did not clearly err by concluding that it was in the best interests of the children to terminate respondent's parental rights.

Affirmed.

/s/ David H. Sawyer
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro

³ Bailey indicated that both JWDM and JMM suffered from posttraumatic stress disorder due to the domestic violence that they witnessed for a number of years. Bailey testified that the children were concerned for respondent's safety and afraid of respondent-father. Bailey said that to heal, JWDM and JMM needed to know that they would not be returning to respondent.